

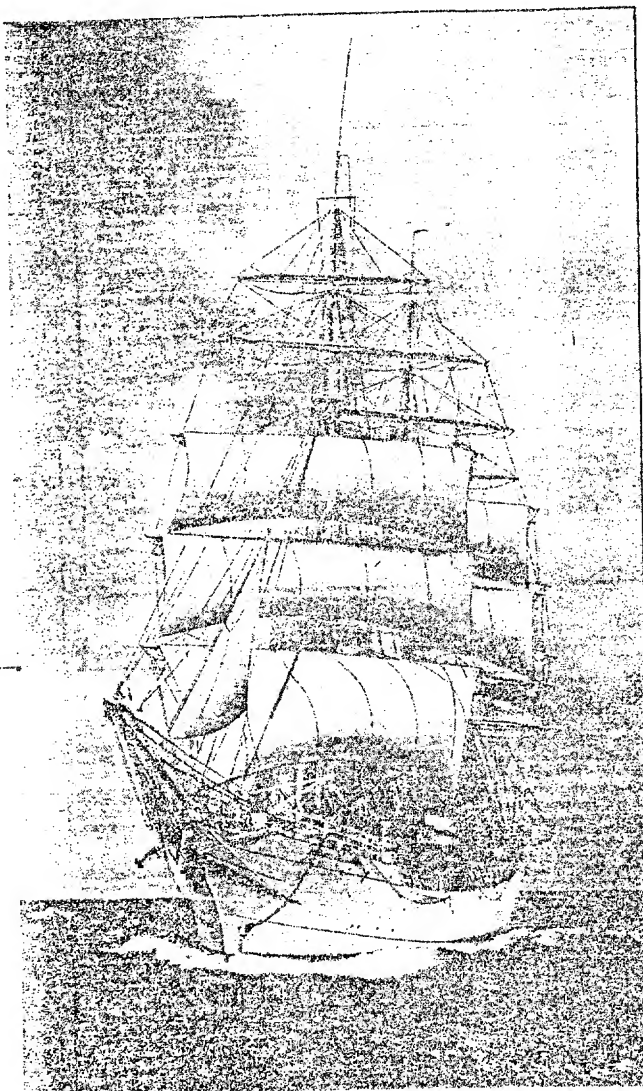
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INTERNATIONAL LAW AND TREATIES

GENEVA LAW OF THE SEA SESSION CONCLUDES

The second substantive session of the Third UN Law of the Sea Conference was held in Geneva from March 17 to May 9.

The principal tangible result of the Geneva Session was the distribution by the Chairmen of the three Main Committees of informal single negotiating texts covering all subjects before the Conference. The Chairmen of a Dispute Settlement Group also submitted a text to the President of the Conference. The single texts were prepared at the request of the Conference delegates and are intended to serve as a basis for negotiation of a comprehensive treaty. These texts do not represent agreed articles or consensus texts but reflect the judgment of the committee chairmen, based on their assessment of the negotiations to date and of the appropriate starting point for further negotiations. However, to a considerable extent, the text reflects actual negotiations carried out in small groups prior to and during this session of the Conference.



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For such provisions the substance of the texts reflects negotiations by States.

Trends Emerge on Territorial Sea and Straits

Two principal trends were observed on the breadth of the territorial sea and transit through straits. A substantial consensus continues on a territorial sea breadth of 12 miles. There also appears to be a strong trend in favor of transit passage of straits used for international navigation as part of a Committee II package. Considerable progress was made in public and private discussions on the straits issue, with a number of Delegations indicating for the first time that they would support a regime of unimpeded passage. A private negotiating group on straits that included Arab states and other developing countries, chaired by the UK and Fiji, produced a single negotiating text that endorses unimpeded passage and will presumably be the basis for future negotiation.

Resolution of the question of recognition of an archipelago principle for certain oceanic States remains an important factor in achieving US straits objectives. On the archipelago issue, the US has achieved substantial agreement with Fiji and the Bahamas, which has in turn assisted in encouraging a moderate group to support straits and archipelago positions that are favorable to the US. These moderate positions have been reflected in the unified texts to a large degree.

Small informal consultative groups basically completed single texts on a large number of important, but less controversial issues, e.g., baselines, innocent passage in the territorial sea and the high seas.

Informal Group Studied Economic Zone

Most of the detailed negotiations on a 200-mile economic zone were made in the Evensen informal Group, a group of some 40 nations from all regions, chaired by Minister Jens Evensen of Norway. The Evensen Group began work on the economic zone prior to the Conference and completed work this session on a chapter on the economic zone, including fisheries, and on the continental shelf. With respect to fisheries, the Evensen Group text includes articles on all fisheries issues including

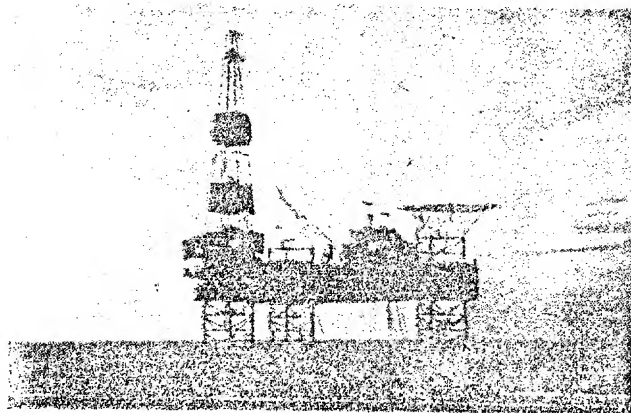
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anadromous species (salmon) but not highly migratory (tuna). It reflects a general consensus within the Conference on coastal State jurisdiction over coastal fisheries within a 200-mile economic zone. Coastal States would have comprehensive jurisdiction to manage coastal stocks in the economic zone, coupled with a duty to insure their conservation and to permit access by foreign states to fish stocks in excess of the coastal State's capacity to harvest. The text on salmon represents an accommodation that contains new strong protections for the State in whose fresh waters the fish originate while permitting some continuation of traditional fishing. Despite a variety of efforts and proposals, it was not possible to reach any compromise on the highly migratory fisheries issue. The US desired to avoid completely discretionary allocation by coastal States on tuna stocks and attempted to achieve a neutral formula that would protect our options in a regional organization. The full utilization of living resources article in the Evensen text, although granting access rights to foreign fisheries in the economic zone, provides for extensive coastal State regulation of such access.

Jurisdiction over the continental margin where it extends beyond 200 miles is clearly an essential element of agreement for most of the important States with broad margins. However, it does appear likely that a compromise acceptable to other States can be reached if such jurisdiction beyond 200 miles is coupled with revenue sharing.

Discussion of several means of revenue sharing which would not impose an unacceptable financial burden was discussed in the last weeks. The

US proposed a system of payment based on the value of the production at the well-head. Under this proposal, there would be no payments for the first five years of production; thereafter annual increases of one percent would accrue up to a maximum of five percent in the tenth year and thereafter. Although agreement was not reached on criteria for delimitation of the con-



Revenue Sharing beyond
200 Miles?

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tinental margin beyond 200 miles, several formulas were suggested which have good prospects for acceptance by broad margin States.

Landlocked and geographically disadvantaged States, some 48 strong, effectively operated as a bloc to insist on their demand of rights of transit to the sea through neighboring States and the right to participate on equal basis in fisheries resources of coastal States. They have also demanded participation in mineral resources in the economic zone but this was presumed to be a tactical maneuver only. The Group served to complicate accommodation on a balance of rights and duties in the zone between coastal and maritime interests. The Group of 77 draft on the economic zone, although considerably more coastally oriented than the Evensen draft to meet demands of coastal LDC's, was rejected by the landlocked group which considered that rights of access incorporated in both texts were insufficient. It is conceivable that if the maritime and coastal States cannot compromise their differences on their concept of the zone, the landlocked/geographically disadvantaged States could use their voting power to bloc an agreement by opposing a workable text, or by supporting a text unacceptable to a large percentage of other States.

Deep Seabed Discussions Are Politicized

A most difficult problem which emerged from the Conference was in the deep seabed negotiation where many developing countries actively sought to implement the idea of a new economic order. This entailed a complete reappraisal of the use of their collective power as raw materials producers. Efforts in early weeks which seemed likely to move toward an accommodation which developing countries on key questions involving basic conditions of exploitation did not survive pressures within the Group of 77 to return to earlier ideological positions. Doctrinal differences had previously prevented progress on this subject and the gap was not bridged at the Geneva session. However, limited flexibility was shown in efforts to reach an accommodation regarding the powers and functions of the Assembly, Council, Tribunal, and Technical Commissions, as well as on voting procedures and provisional application of the regime and machinery. A significant portion of the deep seabed negotiations was carried out in private consultations. One such negotiating group was formed under the chairmanship of Christopher Pinto (Sri Lanka) at the beginning of the Geneva session. The group

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consisted of Committee I representatives from Sri Lanka, Algeria, Brazil, India, Kenya, Peru, Singapore, Tanzania, France, Japan, the United Kingdom, the Soviet Union and the United States. In addition to this group, the United States continued consultations among the Group of Five (US, UK, France, Japan and the USSR). The principal objective of the Pinto private negotiating group was to assemble the Committee I "political package".

Marine Pollution

In general, negotiations on nonvessel marine pollution issues went well with meaningful environmental protection obligations emerging on several questions. Major problems included (a) the continuing support by some developing countries for a double standard which would allow less stringent standards for developing countries and (b) opposition to effective obligations in ocean dumping and continental shelf pollution. Some developing countries led by Mexico were more moderate and seemed willing to compromise on these questions. ✓✓

On vessel-source pollution beyond the territorial sea, there seemed to be considerable willingness to agree on a compromise based on enforcement rights only, although some developing countries continue to support coastal State enforcement rights in the entire 200-mile zone. The maritime States attempted to limit severely port-State enforcement rights. Many developing countries privately indicated a willingness to support unrestricted port-State enforcement of international discharge standards as part of an overall enforcement system. ✓

Marine Scientific Research

It now appears that future negotiations will center upon a distinction between resource and nonresource related research. Major efforts will have to be made to narrow the scope of resource-related research where the consent of the coastal State would be required in a 200-mile economic zone.

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Agreement on Settlement of Disputes Is Likely

As a result of the work of this session, it now appears that we have a good chance to obtain agreement on binding dispute settlement in the LOS treaty for both the deep seabed and at least for certain questions (e.g., navigation) in areas under national jurisdiction. Latin and Canadian pressure, however, will probably necessitate an accommodation in areas under national jurisdiction to protect coastal States regulatory discretion with respect to resources. There was strong opposition to the concept of the LOS Tribunal by many Latins, the USSR, and Japan, among others. On the other hand, some African delegates indicated privately that the inclusion of the Tribunal in the dispute settlement text might help to develop the requisite developing country support for dispute settlement with binding decision authority.

Next Session Is Set for New York

The Conference Plenary decided that the fourth session (third substantive session) of the Conference should be held in New York for eight weeks commencing March 29, 1976. If the Law of the Sea Conference so determines, an additional session would be held in New York in 1976 with a final signing session in Caracas. The Evensen Group decided to continue its informal negotiations, but it will now become an open-ended group for all interested participants. The Group presently plans to meet during the last week of August and first week in September, with possible additional meetings during the General Assembly and in early 1976. Evensen announced that the subjects of marine pollution, scientific research, outer limit of continental shelf and revenue sharing would be discussed.

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